

1 Paul B. Mengedoth (018507)  
2 **MENGEDOTH LAW PLLC**  
3 20909 N. 90<sup>th</sup> Place, Suite 211  
4 Scottsdale, AZ 85255  
5 Tel: (480) 778-9100  
6 Fax: (480) 778-9101  
7 E-mail: [paul@mengedothlaw.com](mailto:paul@mengedothlaw.com)

8  
9 (Additional counsel on signature page)

10  
11 *Attorneys for Plaintiff Kevin Rouse*

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

Kevin Rouse, an individual, )  
Plaintiff, ) Case No. \_\_\_\_\_  
v. )  
CVS Pharmacy, Inc., a Rhode Island )  
Corporation, )  
Defendant. )  
)

Kevin Rouse (hereinafter “Plaintiff”), by undersigned counsel, brings the following complaint against CVS Pharmacy, Inc. (hereinafter “Defendant” or “CVS”) and states as follows:

**JURISDICTION AND VENUE**

1. This action arises out of Defendant’s numerous violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (hereinafter the “TCPA”).
2. This Court has jurisdiction over action pursuant to 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331. *See also Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b)(2) because the conduct at issue occurred in this District, Plaintiff resides in this District, and Defendant conducts substantial business in this District.

## **PARTIES**

4. Plaintiff is a resident of Scottsdale, Arizona. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

5. Defendant is a foreign corporation organized and existing under the laws of the state of Rhode Island, with its principal office located at One CVS Drive, Woonsocket, Rhode Island, 02895. Defendant is authorized to, and does, conduct business in the state of Arizona. Defendant has appointed CT Corporation System as its agent, located at 3800 N Central Avenue, Suite 460, Phoenix, Arizona 85012. Defendant is a "person," as defined by 47 U.S.C. § 153(39).

## **PLAINTIFF'S FACTUAL ALLEGATIONS**

6. At all times herein relevant, Plaintiff utilized a cellular telephone service and was assigned the telephone number ending in "6525".

7. On or about December 30, 2016, Plaintiff went to a CVS pharmacy located at 9000 E Indian Bend, Road, Scottsdale, Arizona to pick up some prescription medications.

8. While in the process of paying for said prescription medications, Plaintiff was asked on the point of sale customer display screen whether he consented to Defendant's communicating with him by way of text message.

9. Only two options were displayed upon the point of sale customer display screen: "Yes" and "Skip."

10. Plaintiff did not wish to consent to Defendant's communicating with him by way of text message and explicitly communicated such to Defendant's agent facilitating the sale of the prescription medications.

11. Defendant's agent instructed Plaintiff to choose "Skip" on the point of sale customer display screen; Plaintiff did so.

1       12. On or about May 30, 2017, Plaintiff went to a CVS pharmacy located at  
2 4140 County Road 101 N, Plymouth, Minnesota 55446 to pick up a prescription  
3 medication.

4       13. While in the process of paying for said prescription medication, Plaintiff  
5 was asked on the point of sale customer display screen whether he consented to  
6 Defendant's communicating with him by way of text message.

7       14. Only two options were displayed upon the point of sale customer display  
8 screen: "Yes" and "Skip."

9       15. Plaintiff did not wish to consent to Defendant's communicating with him by  
10 way of text message and explicitly communicated such to Defendant's agent facilitating  
11 the sale of the prescription medications.

12       16. Defendant's agent instructed Plaintiff to choose "Skip" on the point of sale  
13 customer display screen; Plaintiff did so.

14       17. Despite being actually aware that Plaintiff did not consent to Defendant's  
15 communication with him by way of text message, Defendant sent Plaintiff numerous text  
16 messages relating to his prescription medications.

17       18. On or about June 18, 2017, Plaintiff contacted Defendant via telephone and  
18 reiterated once again that he did not consent to Defendant's communicating with him by  
19 way of text message.

20       19. From December 30, 2016, to August 29, 2018, Defendant sent Plaintiff 133  
21 separate text messages relating to his prescription medications, each in violation of 47  
22 U.S.C. § 227(b)(1).

23       20. Each of the 137 text messages Defendant sent to Plaintiff were sent by  
24 means of an automatic telephone dialing system, as such is defined by 47 U.S.C. §  
25 227(a)(1). *See also, Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1052 (9th Cir.  
26 2018).

27       21. Each of the 137 text messages Defendant sent to Plaintiff stated a variation  
28 of the following:

- **"Kevin, your Rx order is ready."**

- 1     • “Kevin, your pharmacist filled” your “prescriptions for you at CVS  
2     pharmacy.”
- 3     • “Would you like to refill” your prescriptions?
- 4     • “Kevin, your Rx” is “pending insurance approval.”
- 5     • “Kevin, your Rx” is “too soon to fill.”
- 6     • “Kevin, you have... Rx due for refill.”
- 7     • “Kevin, Rx... is out of refills.”
- 8     • “Kevin, did you know today is the last day to pick up your prescription  
9     order from CVS Pharmacy?”
- 10    • “Kevin, ... the Rx your pharmacist filled for you at CVS will be  
11    returned.”
- 12    • “Kevin, your Dr. did not authorize a request to refill your Rx”
- 13    • “You can now refill by text with our new refill reminders.”

14           22. Of the 137 text messages Defendant sent to Plaintiff, some were sent on the  
15    same day.

16           23. Defendant sent Plaintiff three text messages on December 30, 2016; two text  
17    messages on February 9, 2017; two text messages on February 17, 2017; two text  
18    messages on March 6, 2017; three text messages on June 5, 2017; two text messages on  
19    August 2, 2017; three text messages on August 28, 2017; two text messages on  
20    November 20, 2017; two text messages on November 21, 2017; two text messages on  
21    April 24, 2018; two text messages on April 27, 2018; two text messages on May 1, 2018;  
22    and two text messages on July 30, 2018.

23           24. Moreover, Defendant consistently sent Plaintiff more than three text  
24    messages per week.

25           25. From December 30, 2016, to January 6, 2017, Defendant sent Plaintiff five  
26    text messages.

27           26. From March 1, 2017, to March 6, 2017, Defendant sent Plaintiff four text  
28    messages.

29           27. From March 29, 2017, to April 6, 2017, Defendant sent Plaintiff six text  
30    messages.

31           28. From June 1, 2017, to June 5, 2017, Defendant sent Plaintiff five text  
32    messages.

29. From June 8, 2017, to June 21, 2017, Defendant sent Plaintiff seven text messages.

30. From July 19, 2017, to August 2, 2017, Defendant sent Plaintiff nine text messages.

31. From August 25, 2017, to September 24, 2017, Defendant sent Plaintiff 13 text messages.

32. From November 20, 2017, to November 21, 2017, Defendant sent Plaintiff four text messages.

33. From January 23, 2018, to February 1, 2018, Defendant sent Plaintiff eight text messages.

34. From February 26, 2018, to March 5, 2018, Defendant sent Plaintiff four text messages.

35. From April 20, 2018, to May 7, 2018, Defendant sent Plaintiff nine text messages.

36. Of the 137 text messages Defendant sent to Plaintiff, 133 failed to include an easy means to opt out of receiving such future text messages.

37. Defendant's conduct in violation of the TCPA caused Plaintiff to unnecessarily expend significant time and effort and caused him a significant amount of annoyance and frustration.

## **CAUSES OF ACTION**

## COUNT I.

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT -  
47 U.S.C. § 227 *et seq.***

38. Plaintiff incorporates by reference all foregoing paragraphs as if fully stated herein.

39. The TCPA prohibits Defendant from sending Plaintiff text messages by means of an automatic telephone dialing system, except for emergency purposes or with Plaintiff's express consent. *See, 47 U.S.C. § 227(b)(1).*

40. Defendant utilized an automatic telephone dialing system to send Plaintiff text messages regarding his prescription medications, non-emergency purposes and without Plaintiff's consent, on 133 separate occasions, in violation of 47 U.S.C. § 227(b)(1).

41. Defendant's foregoing acts and omissions constitute numerous and multiple knowing and/or willful violations of 47 U.S.C. § 227(b)(1).

42. Accordingly, Plaintiff is entitled to an award of \$1,500.00 in statutory damages per each violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(C).

43. Alternatively, Defendant's foregoing acts and omissions constitute numerous and multiple negligent violations of 47 U.S.C. § 227(b)(1).

44. Accordingly, Plaintiff is entitled to an award of \$500.00 in statutory damages per each violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B).

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for relief as follows:

- Statutory damages of \$500.00 for each text message determined to be in violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3);
- Treble damages for each violation determined to be willful and/or knowing under the TCPA, pursuant to 47 U.S.C. § 227(b)(3); and
- For such other and further relief as may be just and proper.

## TRIAL BY JURY

Plaintiff is entitled to, and hereby demands, a trial by jury. US Const. amend. VII; Fed. R. Civ. Pro. 38.

1 Dated this 26th day of March 2019. Respectfully submitted,

2

3 By: /s/ Paul B. Mengedoth

4 Paul B. Mengedoth, Esq. (018507)  
5 **MENGEDOTH LAW PLLC**  
6 20909 N. 90<sup>th</sup> Place, Suite 211  
7 Scottsdale, AZ 85255  
8 Tel: (480) 778-9100  
9 E-mail: paul@mengedothlaw.com

10 Thomas J. Lyons, Esq.  
11 (Pro hac vice application pending)  
12 **LYONS LAW FIRM, P.A.**  
13 367 Commerce Court  
14 Vadnais Heights, MN 55127  
15 Telephone: (651) 770-9707  
16 Facsimile:(651)770-5830  
17 tlyons@lyonslawfirm.com

18 Thomas J. Lyons, Jr., Esq.  
19 (Pro hac vice application pending)  
20 **CONSUMER JUSTICE CENTER, P.A.**  
21 367 Commerce Court  
22 Vadnais Heights, MN 55127  
23 Telephone: (651) 770-9707  
24 Facsimile:(651)704-0907  
25 tommy@consumerjusticecenter.com

26  
27  
28 *Attorneys for Plaintiff*